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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DAVID HILL AND KAREN HILL,

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT OF  
CORRECTIONS, *et al.*,

Defendants.

Case No. C08-5202 BHS/KLS

ORDER RE-NOTING MOTION TO  
DISMISS AS MOTION FOR  
SUMMARY JUDGMENT

By Order dated July 24, 2008, the District Court has re-referred this matter to the undersigned as Plaintiffs submitted documentary evidence in support of their objections to the Report and Recommendation (Dkt. 17). Therefore, in accordance with Federal Rule of Civil Procedure 12(d), Defendants' Motion to Dismiss (Dkt. 5) shall be treated as a motion for summary judgment. (Dkt. # 18).

Plaintiffs are advised as follows:

A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact -- that is, if there is no real dispute

1 about any fact that would affect the result of your case, the party who asked  
2 for summary judgment is entitled to judgment as a matter of law, which will  
3 end your case. When a party you are suing makes a motion for summary  
4 judgment that is properly supported by declarations (or other sworn  
5 testimony), you cannot simply rely on what your complaint says. Instead,  
6 **you must set out specific facts in declarations, deposition, answers to**  
7 **interrogatories, or authenticated documents, as provided in Rule 56(e),**  
8 **that contradict the facts shown in the defendant's declarations and**  
9 **documents and show that there is a genuine issue of material fact for**  
10 **trial. If you do not submit your own evidence in opposition, summary**  
11 **judgment, if appropriate, may be entered against you. If summary**  
12 **judgment is granted, your case will be dismissed and there will be no**  
13 **trial.**

14 *Rand v. Rowland*, 154 F.3d 952, 962-963 (9<sup>th</sup> Cir. 1998)(emphasis added).

15 Furthermore, Local Rule CR 7(b)(4) states that a party's failure to file  
16 necessary documents in opposition to a motion for summary judgment may  
17 be deemed by the court to be an admission that the opposition is without  
18 merit.

19 Accordingly, it is **ORDERED**:

20 (1) Defendants' Motion to Dismiss (Dkt. # 5) shall be **RENOTED** as a motion for  
21 **summary judgment for September 5, 2008;**

22 (2) Defendants' Reply to Plaintiff's Response shall be due on **September 2, 2008** and  
23 Plaintiff's Surreply to Defendants' Reply, if any, shall be due on **September 5, 2008;**

24 (3) The Court's previous Order staying discovery is (Dkt. # 11) is **LIFTED**; and

25 (4) The Clerk of the Court is directed to send copies of this Order to counsel of record  
26 and to Plaintiff.

27 DATED this 6th day of August, 2008.

28 

Karen L. Strombom  
United States Magistrate Judge